Developing Appropriate Dispute Resolution Systems for Law Enforcement and Community Relations: The Pasadena Case Study

NAJEEBA SYEED-MILLER*

I. INTRODUCTION[1]

There is perhaps no greater instigator of community-based conflicts than the issues regarding police and the citizens who they serve. These explosive situations are of particular concern because of the potential for violence to erupt with the parties involved on either side. As with any inter-group conflict, the intersection of multiple identities and functions complicates the resolution process.

Race, ethnicity, and language can play a predominant role in community and police relations. The perceptions the community and police have of one another is often a stumbling block to resolution of conflicts.[2] There is a line drawn between the view of individuals as community members and those who are in the police force.[3] Other professions seldom enter into the private sphere to such a great extent. Law enforcement must engage in the most intimate of relationships with private citizens on a daily basis.

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* Najeeba Syeed-Miller is the executive director of the Western Justice Center Foundation (WJCF) in Pasadena, California, a think-tank organization that works with children, communities, and courts to assure peaceful conflict resolution and improve access to justice. In addition to numerous ongoing youth-based project and recent strides in the areas of environmental mediation and juvenile mental health courts, WJCF has joined forces with the Pasadena Police Department and the Los Angeles County Bar, Dispute Resolution Services, to launch a Police-Community Mediation and Dialogue Program.

[1] I would like to thank Kathy A.M. Gonzales, Western Justice Center Foundation Program Director for Community Engagement, for her outstanding contributions to the development of this program. I would like to thank Judge Dorothy W. Nelson and Judge Dorothy Shubin for their assistance in reviewing this article and providing substantive feedback.

[2] Commentators see the use of mediation in the criminal justice system as one of the most "manifest challenges for the ADR field," precisely because of the explosive history and high emotions involved with perceptions of police, crimes, and communities. Maria Volpe, *Focus: ADR in Criminal Cases: Promises and Challenges*, DISP. RESOL. MAG., Fall 2000, at 4.

[3] Mediation allows citizen and officer to "vent emotions and defend or clarify their actions or perceptions." Vivian Berger, *Focus ADR in Criminal Cases: Mediation Helps Build Understanding Between Cops and Citizens*, DISP. RESOL. MAG., Fall 2000, at 18.

Police officers are vested with enforcement powers and the mechanisms to enforce them when necessary. Community members are increasingly gaining power to review and oversee police actions with the rise of citizens' oversight boards. This interwoven relationship is imposed upon both sides. Officers and citizens do not choose one another; they are thrust into daily interactions based on their respective roles. The physical proximity that is required to police a neighborhood squarely places either party within the context of the other.[4]

The task of unraveling the intricate web of contacts, history of policing, and community relations requires cultural competency, sensitivity to professional cultures, and a high tolerance for painful and difficult conversations. This Article explores the case study of the Pasadena Police Department (PPD) and the work of the Western Justice Center Foundation to establish a mediation and dialogue program. This program is still in its infancy stages and this Article is meant to offer comments on the development phase of a conflict resolution system design for law enforcement and community relations.

II. THE BACKGROUND OF THE PROGRAM

The mission of the Western Justice Center Foundation (WJCF) is to work with children, schools, communities, courts, and government to assure peaceful conflict resolution and improve access to justice. In 2005, Pasadena Police Chief Bernard Melekian approached the WJCF after an officer-involved shooting to develop some method for engaging the community in constructive conversations on mutual concerns.

The overall purpose of this program was "to partner with the Pasadena Police Department and the Pasadena Community to improve the lives of citizens and police officers, through mutual conflict resolution processes and engaging everyone within the community."[5]

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[4] While this may not be the most benevolent example, in Mao's China, the involvement of police in mediation committees with the neighborhood mediation committees was seen as a key to their success. "The public was highly mobilized to participate in community management. With guidance and support from the police, the community could mobilize its political and economic resources to deal with its own problems." Fu Hualing, *Understanding People's Mediation in Post-Mao China*, 6 J. CHINESE L., 211, 215 (1992).

[5] Western Justice Center Foundation & Los Angeles County Bar Association, Dispute Resolution Services, Proposed Business Plan for the City of Pasadena Police Department: A Community Mediation and Dialogue Program 2 (2005).

Two methods of engagement were identified to serve this purpose: (1) Provide the Pasadena community and police department with an effective method of resolving situations that emerge between police and community members, through a neutral third party intervention of mediation (the mediation component); (2) Provide the Pasadena community and police department with an effective method of engaging one another on community-wide issues through a dialogue process that is both responsive for particular situations and also available as an ongoing tool for discussing issues (the dialogue component).[6]

The pilot year began on July 1, 2005, and ended on June 30, 2006. It would be useful to set out at this point the achievements of that pilot year. In the first year of the program, the following activities were held as part of the mediation training: all sworn personnel of the PPD received mediation training; training was administered in batches; a mediation policy document was developed and circulated within the department; a group of twenty-one civilian volunteers received training on community and police mediation techniques (from August 2005–February 2006)—out of which four persons were selected for the panel of mediators for this program; another group of fourteen civilian volunteers completed the first part of the training process in May 2006; PPD leadership received a one day (eight hour) training in conflict resolution and were also participants in the training of mediators; mediators were exposed to panels of officers and community members through their training sessions to develop sensitivity to the issues that both groups face; additionally, WJCF convened the Community Leadership Roundtable that provided feedback and advice on the design of the program.

A. *The Dialogue Component*

During the pilot year, three dialogues were held—on June 25, 2005, October 29, 2005, and May 30, 2006. The audience for the first dialogue was mostly persons aged forty years and over, and numbered about one hundred. The target population for the second dialogue was high school students who were on probation diversion programs or had previous negative contacts with police. Approximately forty-five students attended. The target population for the third dialogue was the entire student body of Washington Middle School—some 450 students.

The evaluations conducted of the dialogues demonstrated that the participants were enthusiastic about the dialogue sessions, learned a lot from

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[6] *Id.*

them, and saw value in continuing them.[7] WJCF continues to study whether the dialogues will have a long-range effect on the wider community.

All of the dialogue sessions started with opening narratives by police and community members. The first dialogue focused on racial reconciliation and included stories of representatives from the African-American and Latino communities. There was also an accompanying story of a sheriff's deputy who was involved with a violent confrontation. The second dialogue featured youth facilitators who were paired with a supportive adult facilitator. The youth facilitators started the dialogue sessions with roleplays of common incidents they thought students experienced in the conflicts they had with police. In the final dialogue, elicitive theatre techniques were used to portray and frame the issues between police and youth. After the narrative portions, participants were divided into breakout sessions with a ratio of 1:10 per facilitator. Each group recorded their brainstormed responses and presented it to the chief and other participants. WJCF collaborates with the Racial Justice Committee of the Pasadena YWCA, the Office of Reconciliation Ministries, the Pasadena Human Relations Commission, and the City Conversations Project of the Office of Creative Connections to convene and do outreach for the dialogue component of this program.

III. ESTABLISHING THE CONTEXT

Southern California represents a unique geographical, historical, and cultural history. The conceptualization of race in this region includes notions of color, but also encompasses culture, language, national identity, and neighborhood delineations.[8] This region represents ever evolving structures

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[7] According the Police Assessment Resource Center report on the dialogue component, "more than 9 in 10," officers were satisfied with the dialogue event they attended. POLICE ASSESSMENT RESOURCE CENTER, ASSESSING COMMUNITY POLICE RELATIONS IN PASADENA 52 (Aug. 2005), http://www.parc.info/pubs/pdf/Police_Community_Relations_in_Pasadena.pdf.

[8] Los Angeles County represents a different demographic profile when compared to the general U.S. population in terms of the concentration of immigrant populations. While the national profile of the U.S. population constitutes only 14.5% Latino, the Los Angeles region has over a 47% Latino population. Similar trends exist within the Asian-American community, with 13.1% of Los Angeles County's population versus only 4.3% of the national profile. *See* U.S. Census Bureau, United States: 2005 American Community Survey Data Profile Highlights http://factfinder.census.gov/servelet/ACCSSAFFFacts?_sse=on (last visited Oct. 24, 2006); U.S. Census Bureau, Los Angeles County, California: 2005 American Community Survey Data Profile Highlights http://factfinder.census.gov/servlet/ACSSAFFFacts?

for identity development. Creating a system to address these various factors is a daunting challenge and one that can present insurmountable difficulties in implementation.

The imposition of models of race and ethnicity that are founded on a duality of races (one majority and one minority) fails to address the needs of Pasadena which has a diverse population beyond just one majority and one minority.[9]

The polyglot nature of communities gives rise to a need for an intervention model that is adaptable and culturally responsive to the needs of each specific group, while maintaining some semblance of internal coherence and organization. Challenges for the development of any inclusive model are manifold.

A. *Language*

The translation of basic concepts across linguistic divides can be daunting. The historical meaning of a word might or might not be relevant to a particular community.[10] In the Pasadena model, during the first community-wide dialogue focusing on racial reconciliation, the organizers experienced this challenge. The word *reconciliation* was clearly relevant and appropriate for the African-American community who was present. Some police forces were previous symbols of problematic relationships with community and police during the civil rights era; thus, in the more recent

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(enter Los Angeles County and California into the search box) (last visited Oct. 24, 2006).

[9] Pasadena is a diverse community. According to the 2000 Census, Pasadena's population increased 1.8% to 133,936. Pasadena is an ethnically diverse community. The 2000 Census found 53.4% of Pasadenans are white, 33.4% are Latino, 14.4% are African-American, 10% are Asian, 0.7% are American Indian and Alaska Native, 0.1% are Native Hawaiian and Other Pacific Islander, and 16% are some other race. English only is spoken by 55% of the population over age five. The Spanish language is spoken by 29.3% of the population over age five. The proportion of those speaking a language other than English at home is 45%; 22.2% do not speak English well. *See* City of Pasadena, Pasadena Demographics, http://www.cityofpasadena.net/statistics.asp (last visited Oct. 22, 2006).

[10] When discussing best practices for mediators practicing in the postmodern arena, Dale Bagshaw emphasizes the importance of developing "communication competence," specifically focusing on the "interpretive framework" that clients bring to the mediation process. *See* Dale Bagshaw, *The Three M's—Mediation, Post Modernism and the New Millennium*, MEDIATION Q., Spring 2001, at 205, 218.

times, reconciliation dealt with the painful memory of this history.[11] Small dialogue sessions appropriately addressed this history, and community members shared a collective memory of how such events had influenced their views of law enforcement today.[12]

The word *reconciliation* did not carry a relevant meaning to the two Spanish-speaking dialogue circles that were participating in the event. The experience of the recently immigrated community with police was wholly different.[13] The current encounters were much more related to immigration issues.[14] Thus, the past-oriented terminology was not useful in the dialogue session, and the police officers who were present along with the facilitators had to reframe the discussion to reflect the current needs of the community.[15]

For any system to be effective in addressing conflicts between communities and police, the potency of language in its many forms must be explored and considered.[16] Outreach and involvement of community members by engaging them in language-appropriate methods are absolutely necessary for the success of any program.[17] One example of the need for outreach is the Minneapolis Civilian Review Board, which had to issue brochures on complaints in eight different languages.[18]

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[11] "The police officer in the ghetto became the symbol of the national crisis in race relations." Samuel Walker, *The New Paradigm of Police Accountability: The U.S. Justice Department "Pattern or Practice" Suits in Context*, 22 ST. LOUIS U. PUB. L.J. 3, 13 (2003).

[12] NAJEEBA SYEED-MILLER, PASADENA POLICE MEDIATION AND DIALOGUE PROJECT 2 (Aug.1, 2007) (unpublished report on June 29, 2006 Dialogue on Racial Reconciliation, on file at the Western Justice Center Foundation).

[13] *Id.*

[14] *Id.* at 3.

[15] *Id.* at 3.

[16] Christopher Cooper explores the notion that some police officers resort to language and a tone of engaging with communities that is closer to arbitration rather than mediation. Christopher Cooper, *Mediation in Black and White: Mediation Center-Police Partnerships—A Dignified Police Response.* MEDIATION Q., Spring 2001, at 281, 288.

[17] Cooper specifically recommends that law enforcement "consider the perceptions of people of color to police responses." *Id.* at 289. This is a key to successful outreach, to target outreach in a way that is responsive to the history and understanding of the community with the goal of being sensitive to the history of that community.

[18] Walker, *supra* note 11, at 28.

B. *Conceptualization of the Conflict*

The neutrality of the mediators or facilitators will be greatly compromised if they do not embrace or understand how important it is for the parties to express the experience of dealing with police and community issues.[19] Within the setting of the Pasadena program, the organizers had to spend a significant amount of time explaining to the police officers that the goal of mediation was not an "apology" but rather an "understanding." If an apology emerged that was fine, but it was not the goal of the mediation process. This one word held great meaning for the police officers. While many of them mentioned that they would acknowledge any problematic behaviors, they wanted to have the opportunity to explain police procedures to the private party.[20] This was a very important component of the mediation training that was implemented. Mediators and facilitators alike were taught to explore the narrative that the officer brings to the mediation or dialogue session.

Officers often wanted a chance to be "humanized." They felt that the uniform they wore would create a barrier. A simple action for the community-wide dialogues was the directive from the chief of police for officers to wear a casual form of their own uniforms that did not create a separation between the participants. They were clearly identified as being members of the police force, but the clothing was less intimidating than a fully uniformed officer.

Mediators and facilitators must be keenly aware of how words, body language, and appearance greatly influence community and police relations. Their success depends on being able to translate these factors that influence communication effectively from one side to the other.[21] As the program was

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[19] The nature of citizen complaints places officers and citizens in an adversarial position with one another. The officer has the pressure of dealing with an accusation that may affect his personnel record and the community member has a stake in the outcome of an incident that is being investigated. Samuel Walker & Carol Archbold, *Mediating Citizen Complaints Against the Police: An Exploratory Study*, 2000 J. DISP. RESOL. 231, 232.

[20] Syeed-Miller, *supra* note 12, at 2.

[21] Mediators have characterized their roles in various ways. For example, they view themselves as a "guide, conduit, catalyst, bridge builder, and assistant." Cheryl Picard, *Common Language, Different Meaning*, 18 NEGOT. J. 251, 254 (2002). Here, we argue for an extension of the role of the mediator as translator between two different cultures. While cultures are often associated with ethnic or racial communities in the context of police and community, the two groups have integrated cultural norms for which the mediator must effectively translate between the two.

in the process of development, WJCF invited community members, through the Leadership Roundtable, to offer comments and feedback on the program development. Again the conceptualization of the conflict was a key in creating the legitimacy of the program. For the initial training of mediators, community members were asked to sit on a panel and offer their feedback on the program development aspects and the challenges that the Pasadena community would face if they engaged in such a program.

Mediators and facilitators were exposed to the realities of what community members experienced in their interactions with police and what barriers existed to resolving conflicts within this setting. Gaining access to the body of knowledge and experience was a key to sensitizing mediators and facilitators to the needs of the community members who would be present at the mediations and dialogue sessions.[22]

C. *Engage Stakeholders in the Development of the Program (Dialogue as a Means to an End)*

In the development of any conflict resolution intervention system, it is most useful to use dialogic processes before one actually engages in the intervention.[23] WJCF spent a significant amount of time talking to community members as mentioned earlier. Additionally, whenever possible, police unions were also consulted and directly invited to work on the creation of the dialogue and mediation program. Inclusion of unions was a key to the success of the "buy-in" of the department. Often the nature of citizen complaints is viewed as adversarial in nature.[24] One of the major failures of

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[22] The goals of the training sessions included "[p]roviding a forum for community understanding of police policies, and procedures, and recognition of exceptional service, in an effort to foster community and police relations" and to "[e]nable police and community members to become proactive partners in resolving community problems." Mediation Orientation Training, Goals of the Collaboration, June 6, 2005.

[23] This stage of development might be described as "scoping." The third party "simultaneously informs and educates potential participants about the dialogue process and begins to establish the authority and trust that parties need . . . ." Susan Omalley Wade, *Using Intentional Values Based Dialogue to Engage Complex Public Policy Disputes*, CONFLICT RESOL. Q., Spring 2004, at 361, 369.

[24] Walker & Archbold, *supra* note 19, at 232. The process is described as adversarial utilizing the following process for a typical complaint process: "A citizen complaint is investigated to determine whether there is sufficient evidence to sustain it; the accused officer enjoys a presumption of innocence; disposition of the complaint is based on the strength of the evidence; if the complaint is sustained, the finding is referred to the police chief executive for disciplinary action." *Id.*

any community and police mediation program is the resistance by officers internally.[25] By engaging unions from the beginning, the program created incentives for officers to participate.

The program was beneficial in a way officers would understand in their own context.[26] It was not punitive in nature because those who were out to protect the interests of the officers had been involved with the development of the project. Similarly, WJCF invited civil rights leaders to assist with the development of the program and offer feedback. Thus, those invested with the community's concerns were also able to ensure that the program would not compromise the rights of any who were involved with its implementation.[27] There is still work to be done in this area, as identified by Chief of Police Bernard Melekian. He mentions that the single most important factor to overcome is the issue of "trust, because this is a new process and both parties may have significant levels of suspicion to overcome, but . . . such programs allow all parties to realize that policing is done in a social context, not just a vacuum."[28]

WJCF has employed another safeguard for protecting civil rights. The Police Assessment Resource Center (PARC) will serve as the monitor of the mediation and dialogue program.[29] PARC is the leading civilian oversight monitoring organization in the nation headed by Merrick Bobb. [30] PARC staff attend all mediations and dialogue programs and offer feedback to the

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[25] "The single most important obstacle to mediation is opposition from rank and file and their police unions. This factor was mentioned by 64% of all persons interviewed." *Id.* at 236.

[26] Syeed-Miller, *supra* note 12, at 4.

[27] This is an ongoing concern of the organizers of this program. It is certainly not a resolved issue and the underlying criticisms of mediation in general apply to this program. Two general themes of criticism are as follows: "[T]hat the psychological theories of prejudice suggest that mediation will disservice disadvantaged people, and that a pro rights approach suggest that mediation will disservice disadvantaged people." Isabelle Gunning, *Diversity Issues in Mediation: Controlling Negative Cultural Myths*, 1995 J. DISP. RESOL., 55, 58 (1995). Gunning notes that because of the informality of mediation and its lack of procedures, it is "fertile ground within which prejudice of negative cultural myths can flourish." *Id.* at 93. She does conclude however that if the mediation process includes "the shared value of equality," then it is possible to proceed ethically with the process. *Id.*

[28] Interview with Bernard Melekian, Chief of Police, Pasadena Police Department, in Pasadena, Cal. (July 13, 2006).

[29] Syeed-Miller, *supra* note 12, at 4.

[30] Police Assessment Resource Center is a national organization based in Los Angeles, California.

PPD and organizers of the program.[31] This hybrid model of evaluation and monitoring has afforded the organizers numerous opportunities to investigate if the program is permeating PPD culture and meeting the needs of the consumers who use it.

D. *Use Dialogue and Mediation as Simultaneous Processes*

While there are currently at least sixteen programs around the county that utilize mediation as a process for resolving citizen complaints against officers,[32] the use of dialogue as a contemporaneous process is less common. In the first year, the change in personnel procedures and outreach to the community can pose great challenges for any new police and community mediation program; the lack of information about mediation by both community and law enforcement can contribute to a lack of support for such programs.[33] A less formal process such as dialogue, where no particular resolution is agreed to, can help to bolster the credibility and utilization of the mediation process.[34]

E. *Promote Accountability on the Part of the Community and the Police Department*

Because of the public nature of dialogues, which can be open to anyone from the community, the law enforcement agency presents its public face on issues of great concern to the community.[35] The open process can instill confidence in a department if the agency listens and responds to the concerns of the community.[36] For law enforcement, it can be a challenge to meet with individuals who can express their own views on issues that impact their lives;

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[31] Syeed-Miller, *supra* note 12, at 4.

[32] Walker & Archbold, *supra* note 19, at 233.

[33] *Id.* at 241.

[34] Walker and Archbold identify the success of Portland's mediation program based on the "serious commitment to community policing which places great emphasis on building partnerships with community residents." Walker & Archbold, *supra* note 19, at 238–39. Because dialogue sessions are open to more community members and have a higher profile than private, confidential mediations it is possible that the Pasadena program will build further partnerships because a host of organizations are involved in the design and implementation of the wider community dialogues.

[35] *Id.* at 238–40.

[36] *Id.*

dialogue provides that one on one contact.[37] Mediation as a process is limited in its public impact because of the necessary mechanisms for confidentiality,[38] but is still a mechanism that can promote accountability, especially in concert with public dialogues. [39]

Community leaders are also held accountable by their constituencies who are invited to the dialogue sessions.[40] The voice of the person can be amplified beyond a monolithic conceptualization of what a particular leader says is the major concern of the community.[41] For example, in one of the major dialogue sessions held in Pasadena, the outcome of the dialogue session for one group was not the relationship *with* the police. Rather, the group felt that internal conflicts between their own communities were the true barrier to resolving community and police issues. There was far more interest in intra-group dialogue with leaders and ordinary people instead of dialogue with the police as the first step. Dialogue allowed this marginalized community to create an "interior" space to discuss vital issues, before

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[37] *Id.*

[38] *Id.*

[39] Walker & Archbold, *supra* note 19, at 241. "By its very nature, mediation provides for a face to face meeting between the officer and complainant." *Id.* In the typical complaint procedure, neither party meets face to face to resolve the issue. The complaint makes its way through the process without the chance for parties to meet face to face. This addresses the officer's need to be "humanized for the citizen" and vice versa, which was a typical issue raised in the dialogue sessions. Both sides felt that most contact started on a negative note. The interactions were based on an alleged violation of the law, thus this did not allow for a positive interaction. Youth identified this as the main issue they faced in interacting with the police. As one Washington Middle School student said in her evaluation of the May 30, 2006, dialogue facilitated by the Western Justice Center Foundation, "I see the police as humans and I don't see them as mean people. I will respect them because they are trying to help us and not trying to arm (sic) us." Another student said that they "learned that they are people also." One student was surprised to find that "police are protectors, leaders, lifeguards and human protectors."

[40] A useful concept to explore when constructing dialogues involving problem solving in entrenched conflict scenarios is the importance of single identity work. Single identity work is defined by "espousing an *intragroup* rather than *intergroup* approach . . . . It seeks to create opportunities for a single tradition to debate complex issues relating to the conflict and to enable exploration of their own culture as part of the process." Cheyanne Church, Anna Visser & Laurie Shepard Johnson, *A Path to Peace or Persistence? The "Single Identity" Approach to Conflict Resolution in Northern Ireland.* CONFLICT RESOL. Q., Spring 2004, at 273, 282.

[41] By engaging community members beyond just leaders, Church, Visser, and Shepard Johson note that "a more open and challenging discussion about issues is likely to occur among participants perhaps for the first time in their lives." *Id.* at 283.

moving into the exterior space to work on relationships with the police department.[42]

F. *Create Policy Changes that Have a Greater Impact than Mediation Alone*

Mediation sessions may be viewed as isolated incidents that in their entirety can change and have an impact on community and police relations.[43] The instigator for a mediation process is often the complaint of a private individual, and the mediation session itself is predicated on a *negative* interaction.[44] If the mediators can rise to the occasion, the session may transcend the initial sources of discontent and move parties to a greater understanding of one another.[45]

By providing private and safe spaces for resolving conflicts, mediation can transform people at the individual level.[46] In order to have an impact on

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[42] The rise of community accountability for resolution of social conflicts is not just an American notion by any means. There is an underlying premise that the "community should be responsible for the resolution of social conflicts that arise within its boundaries and the enforcement of those resolutions, not the state sanctioned judicial system." Kimberly A. Klock, *Resolution of Domestic Disputes Through Extra-Judicial Mechanisms in the United States and Asia: Neighborhood Justice Centers, the Panchayat and the Mahalla*, 15 TEMP. INT'L & COMP. L.J., 275, 295 (2001). This discussion reflects the Indian panchayat system and Uzbek mahalla system, both processes "focus[ ] on the community and the social responsibility of each member of the community and the community as a whole." *Id.* at 294. This is in effect what the program in Pasadena is seeking to establish through the dialogic processes: an actual space that will transcend formal processes and rejuvenate internal systems of dispute resolution that many communities have long since abandoned because of the reduction of public space and gathering on issues of concern.

[43] There is no definitive research that points to the ultimate effect of mediation on police and community relations. This is an area open to further investigation, but "to the extent that it forces police officers to face their accusers and to account for their behavior, mediation also potentially dissolves the impersonality of contemporary policing and builds bonds of understanding." Walker & Archbold, *supra* note 19, at 241.

[44] *Id.* at 232.

[45] Syeed-Miller, *supra* note 12, at 4 (summarizing mediation sessions in the Pasadena program).

[46] The role of trust within a mediation setting is of paramount importance. Christopher Moore describes mediation as "future oriented," the individual is able to "establish a new relationship or define future terms of the agreement," if the mediators can push parties to "defer judgment about the present situation or party and to limit the intrusion of past judgments or biases to the current case." CHRISTOPHER MOORE, THE MEDIATION PROCESS 178 (1996).

greater community consciousness or law enforcement policies, the combination of such a program with a dialogue process can prove invaluable. The "micro-policy" shifts in a mediation session can be mirrored in the larger "macro-policy" shifts within the community setting or a department regulation.[47] One example from the Pasadena experience was the public dialogue that yielded the development of an advisory group for a particular community.[48] This community was able to utilize the dialogue process by having the chief of police sit with them at their table; as a result, it was clear that the dialogue process needed to continue, and the department extended the invitation to start a sustained engagement process with the group.[49]

G. *Explore the Power of the Narrative and its Role in Creating Agendas*

The dialogue sessions in Pasadena have been focused on giving voice to the community and the police department employees on a particular issue. In the first session, a Latino and African-American community member were asked to share their stories about experiences with the police department. A police officer also shared his experience with a deadly force incident. The impact of the juxtaposition of the narratives that were presented to the audience was profound. Before moving into dialogue groups, audience members felt the commonality of fear that the community members and the police officer felt when dealing with everyday conflicts. Many of the proposed resolutions that emerged from this dialogue session focused on issues of trust and achieving some form of bridge-building between the perceived adversaries in the conflict.[50] The power of narrative within the mediation setting is important.[51] By using dialogue sessions as a

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[47] The importance of emphasizing a change in policies is increasingly recognized as a key to success for any citizen engagement or involvement with police agencies. Moving the focus from individual complaints which may "scapegoat" individual officers to one that will include "policies and procedures designed to change the underlying organizational culture." Walker, *supra* note 11, at 24.

[48] Interview with Chief Melekian, *supra* note 28.

[49] *Id.*

[50] YVETTE SERRATO, REPORT ON FIRST DIALOGUE SESSION (2006) (unpublished report) (on file with author).

[51] Narrative mediation is an emerging field of practice and theory predicated on post structural analysis of power. In particular, the advocates of this orientation assert that the story of marginalized communities is an act of "expressing resistance" which allows them to develop a sense of agency. JOHN WINSLADE & GERALD MONK, NARRATIVE MEDIATION: A NEW APPROACH TO CONFLICT RESOLUTION 51 (Jossey-Bass 2001).

complimentary process, the voice of an individual moves beyond the closed mediation setting to create commonalities between larger groups of people.

H. *Voluntariness of Both Processes is a Key*

The tone of both the mediation and dialogic processes must be one that encourages participants to attend, but leaves the ultimate decision to the parties involved. In the case of the Pasadena mediation program, officers have an incentive to attend because the resolution of the complaint against them may have a positive effect on their personnel records. For community members, attending the mediation allows them personally to have a chance to meet face to face and receive a fair hearing with neutral parties. If there is no resolution, the matter continues through the investigation process.

The tone of the engagement is voluntary. The police officer is asked by the investigating sergeant to engage in mediation.[52] The officer is also directed to speak to the union representative in making this decision.[53] The private citizen is contacted by both the department and the non-profit mediation program by phone to inquire if they are interested in mediation.[54] The combination of formal and informal contacts (via phone and letters) allows the parties to ask questions before the mediation and feel comfortable with the process. Both parties are instructed that the process is voluntary and they may end the mediation at any time.[55] The convening agency (Los Angeles County Bar Dispute Resolution Section) further promotes the voluntariness of the process because the police department is not scheduling the mediations with both parties and is not viewed as "forcing" either side to move to mediation. A third party neutral plays the vital role of convening and preparing, especially the private party, for mediation.[56]

The dialogues that have been held as a component of this program (three so far through June 2006) have also been completely voluntary on the part of the sworn officers and employees of the department who participated. At

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[52] PASADENA POLICE DEPARTMENT, COMMUNITY MEDIATION PROGRAM 1 (May 25, 2005) (on file with author).

[53] *Id.* at 2.

[54] *Id.* at 2.

[55] *Id.*

[56] Lack of knowledge about mediation and the process is an important factor in the success of the program for citizens as well. By utilizing a community based agency that does consistent outreach in two community centers, uses local volunteers, and distributes brochures on the mediation, the Pasadena program avoids the pitfall of "absence of any literature on the subject, community activists or elected officials are also likely to be unaware of mediation." Walker & Archbold, *supra* note 19, at 237.

each dialogue, over twenty-five PPD employees participated and their presence was completely voluntary. They underwent a brief orientation prior to the dialogue sessions and were prepared for the sessions. The community members have commented on how impressed they were with the involvement of the police officers when there was no specific incentive for them to participate, as there might have been with mediation. The use of these simultaneous dispute resolution processes further heightens trust between the two sides. This is imperative in situations where trust is the core issue of building any future relationships.[57]

I. *Neutral Parties Must Have Support from the Department; Especially from the Rank and File*

For any mediation program to work effectively the police department engaged in the process must buy into the program on various levels—this is the single most important aspect for the success of the program.[58] In particular, because the programs are often mandated or started from the top, it is important that various levels of the department are engaged and offer feedback throughout the process.[59]

As was previously mentioned, WJCF engaged the unions in the design and research for the program. Some unions have historically discouraged the participation of police officers in typical citizens' oversight processes.[60]

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[57] Mediation alone cannot serve to enhance the level of trust between community members and police who essentially emanate from different cultural perspectives. The combination of a dialogue and mediation approach enriches and enhances the quality and quantity of contacts beyond the negative, adversarial approaches. This multi-faceted methodology reflects the view of experts in cross cultural conflict resolution who point to a multi-layered approach to engaging those who reflect very different perspectives. Le Baron has developed the "dynamic engagement and dialogic spirit" approach that is constructed in eight stages: (1) attend and assess; (2) suspend judgment; (3) receive the other side; (4) create a shared circle; (5) design a *way through* that reflects cultural common sense; (6) reflect; (7) integrate; and (8) quest. MICHELLE LE BARON, BRIDGING CULTURAL CONFLICT 142 (2003).

[58] Without police support, the programs can face "a posture of hostility," that "represents a nearly insuperable obstacle to the development of viable programs." Walker & Archbold, *supra* note 19, at 237.

[59] Ryan P. Hatch, Note, *Coming Together to Resolve Police Misconduct: The Emergence of Mediation as a New Solution*, 21 OHIO ST. J. ON DISP. RESOL. 447, 457 (2006). Hatch notes that both citizens *and* officers have suspicion of the internal affairs process. *Id.*

[60] Juan R. Cintro Perino, *Developments in Citizen Oversight of Law Enforcement*, URB. LAW., Spring 2004, at 387, 390.

Furthermore, WJCF also made the effort to train representatives from various levels in a two day training session on mediation. Representatives of the union, professional standards, and other units were present to learn about mediation in general and the program specifically. WJCF also presented an orientation to *all* department employees (over three hundred) before the launch of the program. Important feedback was gained from these sessions, such as the notion of how to present the program without focusing only on an "apology."[61] Police officers were invited to attend all of the training sessions that mediators were involved in so that they could understand the mediation process and learn more about mediation. This engagement did pose challenges at times.[62]

In some of the training sessions, resistance to a new process was shared by the officers. Some were concerned that the mediation process would present an opportunity for someone to use it in bad faith. Others were concerned that the mediators were not experts in police procedures. These fears were directly addressed in the program construction through strict confidentiality agreements and internal department policies regarding record keeping of mediation files.[63] Regarding the second point, officers were assured that the mediation process was one in which they were the experts who would share this information regarding procedures, and the neutrality of the mediators would allow them the opportunity to be fairly heard.[64] Another

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[61] Syeed-Miller, *supra* note 12, at 4.

[62] *Id.*

[63] Pasadena Police Department, *supra* note 52, at 3.

[64] Training officers in conflict resolution skills and mediation is a long term goal of the program. In addition to enhancing community and police relations, one of the goals of the program is to enhance the mediator skills of the officers when they serve in the field. This is why WJCF invited officers to the mediator training sessions and held one day of training for leaders of the department both on the process of the program and typical mediation skills. There is an emerging discussion in the field of Alternative Dispute Resolution regarding the role of officers as mediators. Some commentators are critical of this viewpoint. *See* Kelly Rowe, Comment, *The Limits of the Neighborhood Justice Center: Why Domestic Violence Cases Should not be Mediated*, 34 EMORY L.J. 855, 879 (1985). Rowe argues that officers should not engage in informal mediation while dealing with domestic violence calls because it may limit arresting of the offending party. Other commentators disagree. Christopher Cooper encourages officer mediation training and in his view, "too many centers profit (earned from referrals) over concern for the resolution of interpersonal disputes in their communities by restricting the officer from empowering the citizens." Christopher Cooper, *Police Mediators Rethinking the Role of Law Enforcement in the New Millennia*, DISP. RESOL MAG., Fall 2000, at 17. He argues that officers should mediate, especially patrol officers, the cases that they face typically

mechanism to handle this concern was one that the program organizers developed for sensitivity to both community and police issues. Mediator trainees were evaluated for their ability to *understand* the concerns of each side without overstepping boundaries and becoming *advocates* for either side. Some mediator trainees recused themselves from joining the panel when they realized that it was not possible for them to handle such sensitive situations. Others were identified as having to work on these areas or were not invited to move forward. Specialized training is essential for this type of mediation program. Throwing in any mediator who has previous experience in court or community mediation is not sufficient. Mediators must be familiar with and exposed to the history of community and police relations. Within this program, each mediator received at least ten additional hours of training and was exposed to community and police issues beyond the basic thirty hours of mediation that they had previously attended. [65]

J. *Programs Must Be Sustained*

Both the mediation program and the dialogue program were developed as permanent fixtures of the PPD and community.[66] The commitment of the chief of police was outstanding as has been the commitment of the community. For any dialogic process to permeate the culture of an organization, it must be sustained.[67] Initially, this program was founded as a response to a shooting within the community.[68] But the deeper approach of a

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without having to be always urged to refer cases to centers. He notes that this is especially an issue in communities of color. *Id.*

[65] Mediator training beyond the typical thirty to forty hours is necessary. A similar approach to "specialized mediator practice" can be found in the area of victim-offender mediation. "It is not sufficient for a person interested in victim-offender mediation to take only a generic or general mediation course because of the (1) specific nature of the issues that commonly arise in these mediations; (2) the laws governing restitution and juveniles; and (3) the differences between the "traditional" mediation process and the victim offender mediation process." Sheila D. Porter & David B. Ellis, *Mediation Meets the Criminal Justice System*, COLO. LAW., Nov. 1994, at 2521, 2523.

[66] Interview with Chief Melekian, *supra* note 28.

[67] This is precisely the benefit of dialogue that is open to the community and a wider range of the police department employees. The ongoing use of dialogue in conjunction with mediation can overcome the following limitations of mediation alone. Hatch mentions that mediation may not change the culture of a police organization on a "broad scale." Hatch, *supra* note 59, at 461.

[68] *See generally* HAROLD H. SAUNDERS, A PUBLIC PEACE PROCESS: SUSTAINED DIALOGUE TO TRANSFORM RACIAL AND ETHNIC CONFLICTS (St. Martin's Press 1999) (2001) (exploring the notion of sustained dialogue as a process for social change).

systems design allowed for the program to move beyond an initial pilot response to one that fed into the way that the PPD does business in the community. It fit with the long-term goals of the police department and the community.[69]

WJCF engaged with several other faith-based organizations and community groups to develop the dialogic processes.[70] It is important that any mediation entity not work in isolation of the community.[71] The roundtables and organized meetings of the various organizations help to sustain the community engagement process.[72] Additionally, when developing the mediation program, WJCF and the department created an internal process that is continually refined as mediations are convened.[73] The mediation program is completely absorbed into the personnel procedures of the department, ensuring its long-term stability and presence. WJCF's partner, Los Angeles County Bar's Dispute Resolution Services, has also trained mediators who are specifically from the Pasadena community to sustain the program and those who have familiarity with it.[74]

IV. FUTURE DIRECTIONS

The agenda of the dialogue sessions after the first one focused on youth and police relations. The community has identified this as a primary target, and so the second dialogue actually engaged officers and youth who were on a court diversion program and from local schools.[75] WJCF continues to move forward with the department to begin school by school dialogue sessions in the wake of racial tensions and issues that permeate the school and surrounding communities.[76] The mediation program has convened a few

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[69] Interview with Chief Melekian, *supra* note 28.

[70] Syeed-Miller, *supra* note 12, at 4.

[71] Community mediation is defined by its ability to engage the community that it serves. Hedeen identifies the factors that exemplify community mediation: "The emphases on access, diversity, volunteerism, and change represent community ownership of disputes and dispute resolution." Timothy Hedeen, *Institionalizing Community Mediation: Can Dispute Resolution, "of by and for the People" Long Endure?*, 108 PENN ST. L. REV., 265, 276 (2003).

[72] Syeed-Miller, *supra* note 12, at 5.

[73] *Id.*

[74] *Id.*

[75] *Id.* at 6.

[76] There are continued racial tensions and police and community issues that need to be explored in the local Pasadena setting. *See* Mary Frances Gurton, Officer's Bullet

successful mediations and will continue to explore how the process can be used further for different cases. Currently, cases not going to mediation are those related to racial slurs and use of force.[77] It is interesting to note that there are significant arguments for and against mediating cases related to issues of race within the police and community context.[78] Further refining in the screening process and exploration of what types of cases can be mediated will allow for the program to continue its expansion.[79] The most effective method of handling the screening process is to train the officers who handle the cases to identify those that contain serious power imbalances or civil rights issues and may not be the most effective for mediation.[80]

Now that the mediation and dialogue components have been actually implemented, the focus of those components will be less on training and more on marketing and improving the processes developed. This will increase usage and produce tangible, measurable results. Further, a new method of engagement will be added to the program—facilitation. This will be utilized in two areas, neighbor-on-neighbor conflicts and crisis situations.

For the mediation component, WJCF will endeavor to: (1) increase the number of referrals of complaints fit for mediation; (2) increase the number of cases actually convened; and (3) maintain a resolution rate of 80% or

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Killed Woman: Police Investigation of Shooting Continues, PASADENA STAR-NEWS, Sept. 9, 2006, at A1.

[77] Pasadena Police Department, *supra* note 52, at 1.

[78] *See generally* Hatch, *supra* note 59, at 473 (providing a comprehensive discussion of the various positions on mediating cases related to issues of race within police and community contexts). He summarizes the various positions that commentators have put forth. *Id.* The Pasadena community program has attempted to train a diverse set of mediators who can help to balance the cultural competency of the mediation panel. Co-mediation is the model that has been utilized. One potential method of addressing power imbalances is to ensure that the team is ethnically and racially representative of each side. This does give rise to the potential problem identified by Hatch: "A citizen who files a complaint involving an issue of race or ethnicity may initially believe that the mediator who shares the same race or ethnicity of the officer may not be objective during the mediation session. The officer likewise may question a mediator's neutrality if the mediator is the same race as the citizen." *Id.* at 476.

[79] Pasadena Police Department, *supra* note 52, at 1. Cases not going to mediation: force, arrests, slurs and criminal conduct. Cases that do go to mediation are: procedure, service, courtesy and tactics. *Id.*

[80] A parallel example can be found in the case study of the New York Commission on Human Rights Program. In this program investigators and mediators are both aware of the "intricacies of Human Rights Law," which allows them to determine what cases are amenable for mediation or not. Matthew Daus, *Mediation at the New York City Commission on Human Rights*, N.Y. ST. B.J., Jan. 1996, at 18 (1996).

higher. WJCF will employ the following strategies for implementing these goals: (1) educate the persons responsible for determining if a complaint is fit for mediation; (2) continue periodic education of PPD personnel on mediation and the mediation process; (3) develop a special curriculum for new hires and cadets in the academy; (4) monitor the referral process and convening process to ensure that cases do not leak out of the system at those points; (5) increase the pool of complaints that are fit for mediation by funneling complaints from other points in the PPD's traditional complaint process; (6) monitor training of mediators to ensure they have the necessary skill level to provide citizens and officers with a satisfactory mediation experience; (7) complete the training of the second group of civilian volunteers, and host "refresher" training sessions for the four persons selected to be on the panel; and (8) increase citizens' awareness and understanding of the mediation option by effective marketing of the benefits and successes of the program.

For the dialogue component, in 2006–2007, WJCF will: (1) increase the impact and effectiveness of each dialogue which is hosted by WJCF; (2) aid the PPD in its new initiative as providers of security on the campuses of schools in the Pasadena Unified School District by conducting dialogues in at least four such schools (two high schools and two middle schools); and (3) aid the PPD in its crime prevention efforts by hosting at least three interracial dialogues in the Pasadena community. WJCF will employ the following strategies for meeting goals of the dialogue component: (1) conduct research on how to structure the dialogue model so that there is clarity about the target population, the issues to be addressed, the outcomes expected, and the follow-up that will be required; (2) provide facilitation training for a group of civilian volunteers who will act as facilitators for the dialogues; (3) conduct research on how dialogue can be utilized by police who provide security for schools, then design a dialogue model for use by the PPD; (4) conduct research on interracial dialogue techniques, then design a dialogue model that takes into account the needs of the PPD and the Pasadena community; and (5) design and implement a system or program that will identify benchmarks for change so that participants in dialogue can measure the progress that will be made after the dialogue.

In 2006–2007, WJCF will expand its programs to include neighbor-to-neighbor facilitation and crisis intervention to reduce burdens on the police and increase opportunities for community members and the department to develop joint solutions to lingering problems. The goals of the new neighborhood facilitation program are to provide an alternative for citizens in conflict with neighbors over non-criminal issues which do not require police attention, and to reduce the amount of time spent by officers on conflicts that

are not criminal in nature and do not require their attention. WJCF will employ the following strategies to meet these two goals: (1) conduct research on neighborhood facilitation programs throughout the country; (2) conduct research on the number and type of neighbor-on-neighbor conflicts for which officers of the PPD are called out, but do not require their attention; (3) use the research compiled to design a neighborhood facilitation model for the PPD suited to its needs as well as the needs of the Pasadena community; (4) conduct all necessary training of PPD personnel in the use of this program; (5) create marketing materials for this component of the program; (6) test the facilitation model designed by WJCF using cases referred to local public agencies; and (7) evaluate this component.

The goal of the second new program area, crisis facilitation, is to provide the PPD and the citizens of Pasadena with a method of engaging each other in times of high tension over issues which are controversial or inflammatory and especially related to inter-ethnic and interracial conflicts. WJCF will use the following strategies for meeting this goal: (1) conduct research on crisis facilitation programs throughout the country; (2) conduct research on the number and type of crisis situations which confront the PPD each year; (3) use the research compiled to design a crisis facilitation model for the PPD suited to its needs as well as the needs of the Pasadena community; (4) conduct all necessary training of PPD personnel in the use of this program; (5) provide crisis facilitation training to a group of civilian and police volunteers (maybe retirees from the department); (6) create marketing materials for this component of the program; and (7) test the crisis facilitation model design.

WJCF will continue to test the boundaries of mediation, dialogue, and facilitation to establish ground-breaking programs that bring together disparate groups in creative, productive conversations that change the way each entity does business. The goal remains as it has from the beginning: to create the space for the parties to invigorate their relationships and move toward true reconciliation, healing, and resolution of the issues that create barriers between community and police.